IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,   )   CR. NO. 12-00703 LEK
)
          Plaintiff,   )
)
     vs.   )
)
GALI HUFF,   )
)
          Defendant.   )
_____)

ORDER DISMISSING DEFENDANT'S APPEAL WITHOUT PREJUDICE

On August 8, 2012, Pro se defendant Gali Huff ("Defendant") was convicted by a magistrate judge of a misdemeanor traffic violation. [Dkt. no. 3.] On August 21, 2012, Defendant filed an appeal of the magistrate judge's decision ("Appeal"). [Dkt. no. 4.]

On August 29, 2012, the Clerk's Office attempted to send Defendant two letters, one transmitting a copy of the local rules governing appeals from misdemeanor convictions by a magistrate judge and the transcript designation form ("Transcript Letter"), and one informing Defendant that there is a $37.00 filing fee associated with any appeal from a misdemeanor conviction by a magistrate judge ("Fee Letter"). [Dkt. nos. 5, 6.] On September 10, 2012, this Court issued an order directing Defendant to either pay the filing fee or file a CJA 23 Financial Affidavit ("Financial Affidavit") by September 24, 2012. This Court also ordered Defendant to file a completed transcript

designation form by September 24, 2012. [Dkt. no. 9.]

On September 12, 2012, Defendant requested a waiver of the filing fee by filing a completed Financial Affidavit. [Dkt. no. 11.] After considering Defendant's financial circumstances, this Court found that Defendant made the requisite showing under 28 U.S.C. § 1915(a)(1) to proceed without prepayment of fees, and waived the $37.00 filing fee. [Order Waiving Filing Fee, filed 9/17/12 (dkt. no. 14).] The Court's September 17, 2012 order also reminded Defendant that she had until September 24, 2012 to complete a transcript designation form, and the Court cautioned her that, if she failed to complete the form by the deadline, the Court would deem the record on appeal complete without a transcript. [Id. at 2.] On September 24, 2012, Defendant completed the transcript designation form and stated that she did not intend to order the transcript of her August 8, 2012 bench trial. [Dkt. no. 16.]

On October 1, 2012, this Court issued an order deeming the record on appeal complete and providing a briefing schedule. [Minutes, filed 10/1/12 (dkt. no. 15).] This Court ordered Defendant to file an opening brief by October 22, 1012. As of the date of this Order, however, Defendant has not filed an opening brief.

On October 4, 2012, Defendant had a telephone conversation with the courtroom manager in which she indicated

that she had changed her mind and wished to designate the transcript of the bench trial. On that same day, the Clerk's Office sent Defendant a copy of the transcript designation form. [Dkt. no. 19.] Defendant neither returned the completed form nor requested an extension of the time to file her opening brief.

The Court has the discretion to dismiss Defendant's Appeal based on her failure to prosecute. See United States v. Tierney, 66 Fed. Appx. 686, 686-87 (9th Cir. 2003) (holding that the district court acted within its discretion in dismissing an appeal from misdemeanor convictions by a magistrate judge for failure to prosecute after the defendant failed to comply with a district court order to file a memorandum setting forth the legal and factual basis for his appeal); cf. Ninth Circuit Rule 42-1 ("When an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal. . . .").

Defendant has failed to comply with this Court's order that she file an opening brief by October 22, 2012. This Court therefore FINDS that Defendant has failed to prosecute the Appeal, and Defendant's Appeal is HEREBY DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, November 2, 2012.

 /S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

**UNITED STATES OF AMERICA V. GALI HUFF; CR. NO. 12-00703 LEK;
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